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# Chapter Two: Introduction

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# Chapter Two: Introduction

The Alaska Department of Natural Resources (DNR), Division of Oil and Gas (DO&G) is offering an oil and gas exploration license, upon completion of the evaluation of the exploration proposals and a competitive bid process, to the successful licensee.

The exploration license area is approximately 169,000 acres, on and around the Iniskin Peninsula, Iniskin Bay, Chinitna Bay, Oil Bay, and the adjacent state-owned waters. The license area consists of state-owned, unencumbered land within T. 3 S., R. 20-22 W., T. 4 S., R. 20-23 W., T. 5 S., R. 21-24 W., T. 6 S., R. 22-25 W., T. 7 S., R. 23-25 W., Seward Meridian. Only free and unencumbered state-owned subsurface mineral estates are included in the oil and gas license. The exploration license grants the exploration licensee the exclusive right to explore for oil and gas, and could subsequently be converted to a lease. A more detailed description of the license area is found in Chapter Three.

## A. Authority

The Alaska Constitution provides that the state’s policy is “to encourage...the development of its resources by making them available for maximum use consistent with the public interest” and that the “legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State...for the maximum benefit of its people” (Alaska Constitution, article VIII, §1 and 2). To comply with this provision, the legislature enacted Title 38 of the Alaska statutes and directed DNR to implement the statutes.

The legislature found that the people of Alaska have an interest in the development of the state’s oil and gas resources to maximize the economic and physical recovery of those resources; maximize competition among parties seeking to explore and develop the resources; and maximize use of Alaska’s human resources in the development of the resources (AS 38.05.180(a)(1)).

AS 38.05.180(a)(2) further states it is in the state’s best interest to encourage an assessment of its oil and gas resources, allow the maximum flexibility in the methods of issuing leases, and to offer acreage for oil and gas leases or for gas only leases.

## B. Exploration Licensing

Exploration licensing supplements the state’s conventional oil and gas leasing program by targeting areas outside known oil and gas provinces (the North Slope, North Slope Foothills, Beaufort Sea, upper Cook Inlet, and Alaska Peninsula).<sup>1</sup> The licensing program encourages exploration in areas far from existing infrastructure, with relatively low or unknown hydrocarbon potential, and where there is a higher investment risk to the operator. Lease sales held in some of these higher-risk areas have attracted little participation because of the bonus money one has to pay to win the lease. Exploration licensing gives the licensee the exclusive right to explore for oil and gas without this initial expense. Through exploration licensing, the state will receive subsurface geologic information about these regions and, should development occur, additional revenue through royalties and taxes.

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<sup>1</sup> However, there are lands where the exploration licensing program does not apply. AS 38.05.131 states oil and gas exploration licenses statutes (AS 38.05.132 –.134) do not apply to land:

- 1) north of the Umiat baseline, and
- 2) in the vicinity of Cook Inlet that is within the area bounded by
  - A) the north boundary of Township 17 North, Seward Meridian;
  - B) the Seward Meridian;
  - C) the south boundary of Township 7 South, Seward Meridian; and
  - D) the west boundary of Range 19 West, Seward Meridian.

The licensing process begins in one of two ways:

1. Annually each April applicants may submit to the commissioner a proposal for exploratory activity within an area they have specified; or
2. The commissioner may, at any time, request proposals to explore an area he has determined may be subject to the provisions of AS 38.05.132.

Any proposal received by the commissioner must designate how much money the applicant will spend on exploration (the work commitment), the amount of acreage desired, and the term (duration) of the license. An exploration license may range from 10,000 to 500,000 acres, and may have a term of up to 10 years. The proposal need not describe the type of exploration activity although direct exploration expenditures must meet the requirements of AS 38.05.132(f)(1) . However, before any exploration activity may occur, the proposed activity must first go through the required authorization processes.

Within 30 days of receiving a proposal for an exploration license, the commissioner must either reject it in a written decision or give public notice of DNR's intent to evaluate the acceptability of the proposal. The commissioner must also solicit comments and request competing proposals (AS 38.05.133(d)). If the commissioner decides to evaluate the acceptability of a proposal, DO&G develops a written finding determining whether issuing a license is in the state's best interests. DO&G must consider all comments received during the comment period (AS 38.05.133(f)).

Among other requirements set out in AS 38.05.035(e) and (g), the written finding sets the term of the license (both of which may be different than what the applicants proposed). If there are no competing proposals, the finding must also identify the prospective licensee. If competing proposals are submitted and the finding concludes that issuing an exploration license is in the state's best interests, the successful licensee will be determined by a sealed bid process. The successful bidder is the prospective licensee who submits the highest bid in terms of the minimum work commitment dollar amount (AS 38.05.133(h)).

The licensee must pay a one-time \$1.00 per acre license fee, and must annually post a bond equal to the work commitment, less the cumulative expenditures, divided by the years of the remaining license term. There are no additional charges during the term of the license. Upon fulfilling the work commitment, the bond is released; if the work commitment is not fulfilled, the bond is forfeited to the state.

By the fourth anniversary of the exploration license, if the licensee has not completed at least 25% of the total work commitment, the license will be terminated, and the remainder of the security will be forfeited to the state. If the licensee has completed less than 50% of the total work commitment, 25% of the licensed area would be relinquished, with an additional 10% relinquished each successive year until half of the original acreage has been relinquished.

Once the work commitment has been met, and if the licensee requests, the commissioner will convert all or a portion of the remaining license area to an oil and gas lease. Therefore, this written finding contemplates that the exploration license may be converted to a lease.

## **C. Process**

In April 2013, DO&G received a request for an oil and gas exploration license in the Southwest Cook Inlet area, in and around Iniskin Peninsula. On May 30, 2013, the division issued a "Notice of Intent to Evaluate" this proposal (AS 38.05.133(d)), and requested comments and competing proposals. To ensure confidentiality under AS 38.05.035(a)(8), DO&G did not identify the name of the applicant, and identified a solicitation area that was larger than the area sought in the proposal. One set of public comments was received about a communications project involving buried and submerged fiber optic

cable in the southern portion of the exploration license area. The comment and map received, and DNR's response, are in Appendix A.

At the same time, additional proposals were solicited (AS 38.05.133(d)). DO&G received an additional competing exploration license proposal. The prospective licensees are not identified at the time of this written finding, and a planned competitive bidding process will determine the successful licensee (AS 38.05.133(f) & (h)).

Following an evaluation of the exploration proposals, DO&G began developing its written finding. On May 30, 2013, DO&G issued a Request for Agency Information to state and federal agencies, local governments, and parties requesting correspondence for this project. The request asked for publicly available substantial information and data about the area's property ownership, people, economy, current uses, subsistence, historic and cultural resources, fish and wildlife, habitats, other natural resource values, and reasonably foreseeable effects of exploration on the area (AS 38.05.035(g)). Recipients were given until July 29, 2013 to respond. No agency comments were received about the proposed exploration project or license area. The exploration license statutes (AS 38.05.131—.134) and regulations (11 AAC 82.903—.990) do not require a preliminary written finding.

After issuing the written finding, an eligible individual or organization may request the commissioner to reconsider in accordance with AS 38.05.035(i). The request must be filed within 20 days after publication of the written finding. To file a request for reconsideration, an eligible person must have "meaningfully participated" in the administrative review process and must be affected<sup>2</sup> in some way by the finding. "Meaningfully participated" means that the person (1) timely submitted written comment during a public comment period; or (2) presented oral testimony at a public hearing if one was held (AS 38.05.035(i)). The request for reconsideration must specify the basis on which the finding is challenged.

An eligible person may appeal to the superior court only if the person had already requested reconsideration by the agency, and only those points raised in that request for reconsideration may be appealed (AS 38.05.035(l)). By requiring a party to exhaust the administrative review and reconsideration process before appealing to the superior court, the agency has full opportunity to review, analyze, and respond to the appealed concerns before litigation. For the purposes of review, the eligible person appealing must state and prove the defect alleged to exist within the written finding (AS 38.05.035(m)).

## **D. Written Finding**

AS 38.05.035 and AS 38.05.131—.134 govern the issuance of exploration licenses and address public notice requirements. Under AS 38.05.035(e), DNR may not dispose of state land, resources, property, or interests, unless the director first determines in a written finding that a disposal will serve the state's best interests. Because it is understood that the proposed exploration license is a disposal and for ease of reading, the proposed exploration license disposal area will be called the "license area" throughout the director's written finding.

### **1. Requirements**

AS 38.05.133(f) describes what the written finding must address, including all matters set out in AS 38.05.035(e) and (g) (except for 38.05.035(g)(1)(B)(xi)). For ease of reading, this document does not necessarily follow the order as found in AS 38.05.035(g)(1)(B) (Table 2.1).

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<sup>2</sup> Alaska case law defines "a person affected by a decision" as someone who has a personal stake in the results of the decision. *Sisters of Providence v. Dept. of Health & Social Services*, 648 P. 2d 970, 974 (Alaska 1982).

**Table 2.1 Locations of topics required by AS 38.05.035(g)(1)(B)**

AS 38.05.035(g)(1)(B) subsection number	Description	Location in this document
i	Property descriptions and locations	Chapter Three
ii	Petroleum potential	Chapter Six
iii	Fish, wildlife, and habitat	Chapter Four
iv	Current and projected uses; uses and value of fish and wildlife	Chapter Five
v	Governmental powers	Chapter Seven
vi	Reasonably foreseeable effects on subsistence; fish, wildlife, and habitat and their uses; and historic and cultural resources	Chapter Eight
vii	Mitigation measures	Chapter Nine
viii	Oil or gas transportation	Chapter Six
ix	Reasonably foreseeable fiscal effects	Chapter Eight
x	Reasonably foreseeable effects on municipalities and communities	Chapter Eight

## 2. Scope of Review

The scope of this administrative review and finding addresses only reasonably foreseeable, significant effects of the uses proposed to be authorized by the disposal (AS 38.05.035(e)(1)(A)). The director does not speculate about possible future effects that are subject to AS 38.05.035(h).

The director interprets “reasonably foreseeable” to mean there must be:

- some cause/result connection between the lease sales and the effect to be evaluated;
- a reasonable probability that the effect will occur as a result of the lease sale; and
- the effect will occur within a predictable time after the lease sale.

A reasonably foreseeable effect must also be "significant." The director interprets “significant” to mean a known and noticeable impact on or within a reasonable proximity to the license area.

Public input assists in providing an inclusive body of information for a finding. Information provided by agencies and the public assists the director in:

- determining which facts and issues are material to the decision of whether to issue an exploration license;
- determining the reasonably foreseeable, significant effects of licensing and subsequent leasing that arise from those material facts and issues; and
- determining if issuing an exploration license for the area will serve the state’s best interests.

## 3. Phased Review

Phased review is appropriate for exploration licensing. Although the licensee proposed specific exploration activities in its application it is unknown when, where, how, or what kind of development or production might ultimately occur as the result of an exploration license. Whether development would be consistent with public and state interests is unknown at this time. Therefore, the legislature

provided for phased review “to allow for consideration of those issues when sufficient data are available upon which to make reasoned decisions.” Ch. 38, § 1(11), SLA 1994.

The director may, if the project for which the proposed disposal is sought is a multi-phased development, limit the scope of an administrative review and finding for the proposed disposal to the applicable statutes and regulations, facts, and issues that pertain solely to the disposal phase of the project (AS 38.05.035(e)(1)(C)) under the following conditions:

- (i) the only uses to be authorized by the disposal are part of that phase;
- (ii) the disposal is a disposal of oil and gas, or of gas only, and, before the next phase of the project may proceed, public notice and the opportunity to comment are provided under regulations adopted by the department;
- (iii) the department’s approval is required before the next phase may proceed; and
- (iv) the department describes its reasons for a decision to phase.

The exploration license satisfies these requirements for phased review.

Condition (i) is met because this written finding authorizes the issuance of an exploration license, which is the full extent of the disposal phase. The license gives the successful licensee, subject to the provisions of the license, the exclusive right to conduct geological and geophysical exploration for oil and gas within the licensed area. If the license terms are met, and the licensee requests conversion the license be converted to a lease, the licensee will have the exclusive right to drill for, extract, remove, clean, process, and dispose of any oil, gas, or associated substances they may find on those lands converted to a lease. The license itself does not, however, give the licensee authority to proceed with any of those activities. The licensee must first obtain the necessary approvals.

Condition (ii) is met because the license is for oil and gas, and DNR provided public notice and the opportunity to comment when it issued a "Notice of Intent to Evaluate" this proposal (AS 38.05.133(d)), and requested comments on May 30, 2013.

Condition (iii) is met because DNR’s approval is required before the next phase may proceed.

Condition (iv) is met by this discussion of the reasons to phase.

#### **4. Exploration Phase Approval**

This written finding also provides DNR’s explicit approval of the exploration phase, as required by AS 38.05.035(e)(1)(C)(ii)(iii) as well as the disposal phase.

DNR possesses a body of knowledge, covering nearly 100 years of oil and gas activities in Alaska, and around the world that is sufficient to approve the exploration phase. The exploration license applications and this written finding satisfy the conditions for phased review because the applications included specifics about the types of activities that will likely occur during exploration. The director, in making this finding, has limited the scope of the finding to the applicable statutes and regulations, facts, and issues that pertain to the exploration licensing disposal phase and exploration phase.

DNR did provide public notice and the opportunity to comment on exploration in the solicitation area as required by AS 38.05.035(e)(1)(C)(ii), the director considers herein the exploration phase and exploration activities and approves the exploration phase as required by AS 38.05.035(e)(1)(C)(iii), and thus the exploration phase may proceed.